

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-020671

07/16/2012

HONORABLE HUGH HEGYI

CLERK OF THE COURT
K. Ballard
Deputy

T L C HEALTHCARE FINANCE

SCOTT K BROWN II

v.

J D MCMAHAN, et al.

OLIVIER A BEABEAU

ANTONIO M ROSACCI

FINDINGS OF FACT and CONCLUSIONS OF LAW

This matter came on for oral argument before the Court on May 2, 2012 with regard to the claims between Cross Claimant Lisa Williams (hereafter referred to as “Ms. Williams” or “Claimant”) and Cross Defendants J.D. McMahan (“Mr. McMahan” or “Defendant”). Following argument, the Court allowed the parties to submit proposed findings of fact and conclusions of law if they wished. These were received on May 16, and 17, 2012, respectively. The Court took the matters presented under advisement at that time. Having further considered those matters, the Court enters the following findings of fact and conclusions of law pursuant to Rule 52, ARCP.

Findings of Fact

1. Defendant Medical Aesthetics, LLC (“Medical Aesthetics”) provided cosmetic medical services.
2. Mr. McMahan and Ms. Williams are the founding members of Medical Aesthetics.

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3. On June 15, 2006, Medical Aesthetics entered into an Equipment Lease Agreement (the "Lease") with Partners Equity Capital Company, LLC.

4. The Lease was for an Aesthetic Lasers Apogee Elite Laser System, Serial Number 45123 (the "Laser").

5. Mr. McMahan and Ms. Williams guaranteed Medical Aesthetics' obligations under the Lease, and each individually executed a written guaranty of the Lease obligations (collectively the "Guaranties"). Neither of their spouses executed the Lease guaranties.

6. On May 4, 2007, Mr. McMahan and Ms. Williams agreed to terminate their business relationship and, together with Medical Aesthetics, entered into a written separation agreement (the "Separation Agreement") whereby Ms. Williams withdrew as a member of Medical Aesthetics and resigned from her position as President of Medical Aesthetics. Neither spouse executed the Separation Agreement.

7. The Separation Agreement provides, at Paragraph 15:

Equipment Leases. The Parties agree that with regard to the contractual lease obligations of Williams and McMahan for the eight lasers used by the Company on this date and listed on Exhibit "C" hereto, McMahan and the Company will, promptly after the execution of this Separation Agreement, make a reasonable and good faith effort to remove Williams from any payment or guarantor obligations under the leases. As such, Exhibit "C" is fully incorporated and made part of this Separation Agreement. McMahan agrees to assume the full liability on the lease agreement for the lasers used by the Company and listed on Exhibit "C" to this Separation Agreement as of the date of this Separation Agreement. In the event McMahan is unable to remove Williams from her payment or guarantor obligations under such lease agreements, McMahan agrees to fully indemnify Williams for such liability by executing an agreement regarding the applicable lease in the form attached as Exhibit "D" hereto.

8. The Separation Agreement further provides, at Paragraphs 25 and 28, that in the event of any litigation arising out of the Separation Agreement that the prevailing party is entitled to an award of reasonable attorneys' fees and costs.

9. On May 30, 2008, the Lease was assigned to Plaintiff TLC HealthCare Finance ("TLC").

10. Timely payments under the Lease were not made.

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11. On June 23, 2009, TLC initiated this action against Defendants for breach of the Lease and the Guaranties.

12. On September 30, 2009, Ms. Williams filed a cross-claim in this action against Mr. McMahan and his wife, Darlene McMahan ("Ms. McMahan") (the "Cross-Claim").

13. On August 10, 2010, the Court granted TLC summary judgment against Williams and McMahan as to their liability to Plaintiff under the Guaranties for breach of contract.

14. On May 2, 2012, Plaintiff and Defendants reported to the Court, pursuant to Rule 80(d), their collective agreement as to the damages and fees awardable to Plaintiff.

15. Pursuant to the parties' agreement, Defendants agreed to judgment in Plaintiff's favor on Plaintiff's claims for breach of contract in the amount of \$100,000, together with attorneys' fees and costs in the amount of \$30,000.

16. On May 2, 2012, Ms. Williams and Mr. and Ms. McMahan asked to submit the remaining issues between them to the Court through oral argument.

17. No evidence of actual damage incurred by Ms. Williams as a result of the alleged breach of the Separation Agreement was presented at trial.

Conclusions of Law

1. Mr. McMahan breached his obligations to Ms. Williams under the Separation Agreement.

2. Ms. McMahan is liable for Mr. McMahan's breach of contract because of her community status.

3. Ms. Williams has not incurred actual damage as a result of Mr. McMahan's breach of the Separation Agreement.

4. As a consequence, Ms. Williams' Cross-Claim is denied.

After considering the factors discussed in Fulton Homes Corp. v. BBP Concrete, 214 Ariz. 566, 155 P.3d 1090 (App. 2007),

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IT IS ORDERED denying the request by Mr. and Ms. McMahan for their attorney's fees pursuant to A.R.S. § 12-341.01.

FILED: Exhibit Worksheet (and Exhibit Release Forms)

/ s / HUGH E. HEGYI

JUDGE OF THE SUPERIOR COURT

DATED: 7-16-2012

NOTE: Effective June 25, 2012, Judge Hegyi's civil calendar has been assigned to the Honorable Randall Warner (telephone number: 602-372-2966), located in the East Court Building, 101 West Jefferson, Suite 512, Phoenix, Arizona 85003.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.